

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5411 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

HEIRS OF KALYAN KARSHAN KUNVERBEN KALYAN

Versus

STATE OF GUJARAT

Appearance:

MR JR NANAVATI for Petitioners

MR KC SHAH ADDL GOVERNMENT PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 26/11/1999

ORAL JUDGEMENT

#. The petitioner moved this application under Section 20(1) of the Urban Land (Ceiling and Regulation) Act, 1976 (which is hereinafter referred as 'the Act' for sake of brevity). The application of the petitioner has been rejected by order dated 15-12-1983 by the competent authority. That order has been challenged under this petition.

#. The petitioner has been found with excess land of

53722 sq.mtrs. The exemption was sought to use the land for agricultural purpose. The State Government has rejected the application on the ground that the exemption claimed is inconsistent with the provisions of the Act. There is no undue hardships to the petitioner and the Government requires the land for public purpose.

#. The learned counsel for the petitioner submitted that the petitioner has not been given an opportunity of hearing before taking decision on his application and an opportunity of filing written representation should be given to him. As such, order is violative of the statutory provisions of law and is not maintainable at all. He has also relied upon the full bench decision of this Court in case of M/s Avanti Organisation Vs. Competent Authority and Additional Collector, Urban Land Ceiling Act and others reported in 1989(1) GLR page 586. I have given my anxious thoughts to the submissions made on behalf of the petitioner. The learned counsel for the petitioner emphasized the rule laid down by the full bench in para 14 which is reproduced as under;

"14. In view of the above discussion, we are clearly of the opinion that it is for the State Government while dealing with an application under Section 20(1) of the Act to decide, having regard to the facts and circumstances of each case, whether a personal hearing or an opportunity to file a written representation to the matters likely to be used against the applicant should be given before disposing of the exemption application on merits against the concerned party, unless the application is ex facie not maintainable in law. We do not subscribe to the argument that in each case the party seeking exemption is entitled to an audience or personal hearing before his application is decided against him. We do not read the observations in Nirmalaben's case to lay down a rule of universal application that in all cases arising under Section 20(1) of the Act regardless of the nature of the dispute, the State Government is bound to give a personal hearing to the applicant before rejecting this application. xxx xxx "

#. The very object of an Act is that a demand for imposition a ceiling on the urban property also, especially after imposition of ceiling on the agricultural lands by the State Government. With the

growth of the population and increasing urbanisation need for orderly development of urban areas has also been felt. Hence, it was considered necessary to take measures for exercising the social control over the speculative rise of urban land with a view to ensure its equitable distribution amongst the various sections of the society and also avoiding the speculative transactions relating the land in urban agglomerations and the bill for the act was intended to achieve the objects (i), to prevent the concentration of urban property in hands of few persons and speculative and profiteering therein (ii) bring out the socialisation of urban land in urban agglomerations to subserve the common good by ensuring its equitable distribution (iii) to discourage the construction of luxury housing leading to conspicuous consumption of scarce building materials and to ensure the equitable utilization of such materials; and (iv) to secure orderly urbanisation. The full bench also held that it should be the endeavour of the State Government to dispose of exemption application made under Section 20(1) promptly and without loss of time. It has been held that in each case, the parties seeking exemption is not entitled to an audience of personal hearing before the application is decided against him. The learned counsel for the petitioner also emphasized that if the personal hearing is not given then, an opportunity to file a written representation should be given before disposing of the exemption application on merits against the party concerned. The main contention is that the party should be given an opportunity of hearing that includes the personal hearing as well as the opportunity to file the written representation to the matter likely to be used against the party concerned. The sub Section (1) does not require that any personal hearing or an opportunity of hearing should be given to the party concerned, though, sub section (2) requires that reasonable opportunity should be given to the party concerned if the exemption already granted is withdrawn. In the case of Gujarat Iron and Steel Company Ltd. Vs. State of Gujarat reported in 1995 (1) GLR page 493 it has been held that Section 22(1)(b) and the proviso thereunder shows that if at all the Government decides to exempt the land, it has to record the reasons therefore, under Section 20(1), the reasons are required to be recorded when the application for exemption is allowed but there is no requirement of recording of reasons at the time of denying exemption sought under Section 20 of the Act. The plain reading of Section 20 shows that there is no specific requirement with regard to recording of reasons or with regard to affording the opportunity while rejecting the application seeking exemption under

Section 20 of the Act. It has been held after considering the several decisions that even quasi judicial tribunals are not under obligation to give a person hearing much less administrative authorities. Requirement of giving a reasonable opportunity has been in fact, complied with. After considering the facts and circumstances of the case and the submissions advanced on behalf of the petitioner, I came to the conclusion that Section 20(1) does not require that an opportunity of hearing should be given to the party concerned under Section 20(1) of the Act. In the present case, the authority has recorded the reasons for refusing the prayer for exemption sought. I do not find any good reasons to interfere. Accordingly, this petition is dismissed. Rule discharged.

Date : 26-11-1999 [KUNDAN SINGH, J.]

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